

**First Amendment to  
REHABILITATION AGREEMENT AND LICENSE  
C2009-199**

This First Amendment to Rehabilitation Agreement and License (this "First Amendment") is made and entered into as of the \_\_\_\_\_ day of September, 2011, between the City of Tempe, an Arizona municipal corporation ("City"), and the Veterans Memorial-Tempe, LLC, an Arizona Limited Liability Company ("Veterans").

**R E C I T A L S**

A. City and Veterans are parties to that certain Rehabilitation Agreement and License dated as of October 8, 2009 (the "Agreement") pursuant to which City granted Veterans a license to use a portion of Tempe Beach Park and the adjacent land owned by City and more particularly described therein (the "Property"), to facilitate the contribution of restoration and construction of the Property.

B. City and Veterans now desire to amend the Agreement in certain respects, as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto state, confirm and agree as follows:

**A G R E E M E N T**

1. **Definitions.** Capitalized terms used herein without definition shall have the meanings given such terms in the Agreement, except where the context clearly indicates otherwise.

2. **Amendments.**

a. Section 2.1 of the Agreement is hereby amended in its entirety to read as follows:

**2.1 Rehabilitation Services.** At its sole cost and expense, Veterans shall perform or cause to be performed all services and provide or cause to be provided all materials required for completion of the Project in accordance with the plan attached hereto as ***Exhibit "B"***. Veterans shall pay all costs, expenses and fees associated with the Project, which are expected to exceed \$2,339,000. The City shall be the sole owner of all work product (in whatever format) produced as part of the Project, and Veterans hereby assigns to City any and all right, title and interest they may have in and to such work product. Veterans shall cause any consultants or other parties retained by it, to execute such further documents of assignment as the City deems necessary or advisable to reflect the City's ownership of the Project.

b. Section 4.1 of the Agreement is hereby amended in its entirety to read as follows:

**4.1. Expiration.** If not sooner terminated, this Agreement shall expire at 5:00 p.m. (Mountain Standard time) on December 31, 2011; however, the term may be extended for not more than three additional one-year terms with the consent of the Manager or his designee. If this Agreement is terminated for any reason, and the Manager deems it necessary for the completion of the Project or further enhancement of the Property, the Manager is hereby authorized to grant a new license to Veterans or such other party as the Manager deems appropriate, on substantially the same terms as those set forth in this Agreement, with a term not to exceed one year, subject to renewal for not more than three additional one-year periods.

c. A new Section 4.4 is hereby added to the Agreement, as follows:

**4.4. Post-Termination Actions and Effect.** Upon the expiration or termination of this Agreement for any reason, if Veterans has expended at least \$420,600 in Project costs, then City agrees to reimburse Veterans up to \$420,600, from the existing allocation of CIP funds, in Project costs incurred and paid by Veterans in completing the Project. Such payment shall be made within ninety (90) days after the Manager receives copies of invoices, or other appropriate documentation evidencing payment of such costs. Upon the expiration or other termination of this Agreement, title to the Project shall automatically pass to, vest in and belong to City without further action on the part of either party, without cost or charge to City except as otherwise provided herein, and without further conveyance or transfer to City; provided, however, that Veterans shall, if requested by City, execute any instruments or documents reasonably required by City to evidence the vesting of title to such property in City.

**3. Continuing Validity.** Except as amended hereby, the Agreement shall remain in full force and effect.

**4. Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Rehabilitation Agreement and License to be executed as of the day and year first above written.

***ATTEST:***

CITY OF TEMPE, an Arizona municipal corporation

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Hugh L. Hallman, Mayor

***APPROVED AS TO FORM:***

\_\_\_\_\_  
City Attorney

Veterans Memorial-Tempe, LLC, an Arizona limited liability company

By \_\_\_\_\_  
Bradley D. Wilde, Manager